

STATE OF MICHIGAN
COURT OF APPEALS

DANIEL J. BAJOR,

Plaintiff-Appellant,

v

BANK OF AMERICA, NORTH AMERICA,

Defendant-Appellee.

UNPUBLISHED

April 22, 2014

No. 314061

Macomb Circuit Court

LC No. 2012-002563-CH

Before: BORRELLO, P.J., and WHITBECK and K. F. KELLY, JJ.

PER CURIAM.

Plaintiff, Daniel J. Bajor, appeals as of right the trial court's order granting summary disposition in favor of defendant, Bank of America, North America (Bank of America). We affirm.

I. FACTS

A. BACKGROUND FACTS

On February 4, 2008, Bajor entered into a mortgage agreement and promissory note with United Wholesale Mortgage. Bajor granted a mortgage on his home to Mortgage Electronic Registration System, Inc (MERS). The promissory note designated Bank of America as the servicing agent for Bajor's mortgage.

On November 17, 2011, Bank of America mailed Bajor a demand for accelerated payment because the mortgage was in default. On December 7, 2011, MERS assigned its interest in the mortgage to Bank of America. Bank of America initiated foreclosure proceedings between December 17, 2011, and June 1, 2012.

B. PROCEDURAL HISTORY

On June 6, 2012, Bajor filed a complaint alleging that Bank of America was improperly foreclosing against his home. Bajor asserted that Bank of America's foreclosure was impermissible and that he did not owe Bank of America any money. Bank of America moved for summary disposition under MCR 2.116(C)(8) and (10), asserting that (1) Bajor did owe on and defaulted on the loan and (2) it was authorized to foreclose because it was both the

mortgagee and servicer of the loan. In response, Bajor argued that Bank of America did not own the debt when it began foreclosure proceedings.

On December 17, 2012, the trial court heard Bank of America's motion for summary disposition. Bajor was not present at the hearing. After noting that it had reviewed Bank of America's motion and Bajor's response to the motion, the trial court granted Bank of America's motion for summary disposition.

II. INITIATION OF FORECLOSURE PROCEEDINGS

A. STANDARD OF REVIEW

This Court reviews de novo the trial court's determination on a motion for summary disposition.¹ When a party moves the trial court for summary disposition under MCR 2.116(C)(8) and (10) and the trial court considered documents outside of the pleadings when deciding the motion, we review the trial court's decision under MCR 2.116(C)(10).²

A party is entitled to summary disposition under MCR 2.116(C)(10) if "there is no genuine issue as to any material fact, and the moving party is entitled to judgment . . . as a matter of law." To survive a motion for summary disposition, once the nonmoving party has identified issues in which there are no disputed issues of material fact, the burden is on the plaintiff to show that disputes exist.³ The trial court must consider all the documentary evidence in the light most favorable to the nonmoving party.⁴ A genuine issue of material fact exists if, when viewing the record in the light most favorable to the nonmoving party, reasonable minds could differ on the issue.⁵

B. LEGAL STANDARDS

A party may foreclose on a mortgage if it is "either the owner of the indebtedness or of an interest in the indebtedness secured by the mortgage or the servicing agent of the mortgage."⁶ A mortgagee may foreclose on a mortgage because the mortgagee is an owner of the interest in the

¹ *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

² *Hughes v Region VII Area Agency on Aging*, 277 Mich App 268, 273; 744 NW2d 10 (2007).

³ MCR 2.116(G)(4); *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996).

⁴ MCR 2.116(G)(5); *Maiden*, 461 Mich at 120.

⁵ *Allison v AEW Capital Mgt, LLP*, 481 Mich 419, 425; 751 NW2d 8 (2008).

⁶ MCL 600.3204(1)(d).

indebtedness.⁷ A mortgagee has an interest in the indebtedness because the mortgagee has a lien on the land which secures the mortgagor's debt.⁸

C. APPLYING THE STANDARDS

Bajor contends that Bank of America cannot foreclose on his mortgage because they do not own it. We disagree.

Here, Bank of America began foreclosure proceedings on December 17, 2011. At that time, Bank of America was the servicing agent of Bajor's mortgage. A servicing agent may foreclose on a mortgage.⁹ Further, Bank of America was also the mortgagee of Bajor's mortgage because MERS assigned its interest to Bank of America on December 7, 2011. A mortgagee may foreclose on a mortgage.¹⁰ Bank of America was entitled to foreclose Bajor's mortgage because it was both the service and mortgagee of the mortgage. Therefore, the trial court properly granted summary disposition.

Bajor also contends that the trial court did not sufficiently explain its reasons for granting Bank of America's motion.

We agree that the trial court's decision could have been clearer. The trial court's order grants summary disposition for "the reasons stated on the record," but the trial court did not state any reasons on the record. However, the trial court did state that it reviewed the parties' motions. The trial court then granted summary disposition to Bank of America. The trial court's decision implies that it accepted Bank of America's arguments. Finally, while it would have been helpful for the trial court to clearly indicate the basis of its decision, the court rule does not require the trial court to state specific reasons or issue a written opinion when granting a motion for summary disposition.

Even if the trial court erred by failing to state its reason for granting summary disposition, its error was harmless. This Court will not modify a decision of the trial court on the basis of a harmless error, and we will not reverse or vacate a trial court's order unless failing to do so appears to this court to be inconsistent with substantial justice.¹¹ Here, Bajor's argument response to Bank of America's motion for summary disposition was meritless because Bank of America is entitled to foreclose on his mortgage. Therefore, overturning the trial court's order would not be consistent with substantial justice.

⁷ *Residential Funding Co, LLC v Saurman*, 490 Mich 909, 910; 805 NW2d 183 (2011).

⁸ *Id.* at 909-910.

⁹ See MCL 600.3204(1)(d).

¹⁰ See *Residential Funding Co, LLC*, 490 Mich at 910.

¹¹ MCL 2.613(A).

III. CONCLUSION

Bank of America is a party entitled to foreclose on Bajor's mortgage. We conclude that the trial court properly granted summary disposition.

We affirm.

/s/ Stephen L. Borrello
/s/ William C. Whitbeck
/s/ Kirsten Frank Kelly